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Error to Circuit Court, Clarke County.

Action by the First National Bank of Berryville and Mrs. J. R. Elder against the Western Union Telegraph Company. There was a judgment for plaintiffs, and defendant brings error. Reversed.

McCormick & Smith, of Roanoke, *Geo. H. Fearons*, of New York City, *Hughes, Little & Seawell*, of Norfolk, for plaintiff in error.

A. Moore, Jr., and *Conrad Kownslar*, both of Berryville, for defendants in error.

STARKE *v.* COMMONWEALTH

Nov. 12, 1914.

[83 S. E. 545.]

Assault and Battery (§ 92*)—Conviction—Sufficiency of Evidence.—In a prosecution for malicious shooting with a pistol, evidence held not sufficient to sustain a conviction.

[Ed. Note.—For other cases, see Assault and Battery, Cent. Dig. §§ 137-139; Dec. Dig. § 92.* 1 Va.-W. Va. Enc. Dig. 739.]

Error to Circuit Court, Brunswick County.

F. W. Starke was convicted of malicious shooting with a pistol, and he brings error. Reversed.

Turnbull & Turnbull, of Lawrenceville, for plaintiff in error.
Attorney General, for the Commonwealth.

CHESAPEAKE & O. RY. CO. *v.* KIDD.

Nov. 12, 1914. Rehearing denied Jan. 12, 1915.

[82 S. E. 933.]

Railroads (§ 383*)—Injury to Person on Track—Contributory Negligence.—A person injured from being struck by a train while he was standing on the track conversing with an acquaintance could not recover from the railroad company, where he would have seen the approaching train had he not failed to look for same, and there was nothing to put the trainmen on notice that plaintiff was paying no heed to his danger.

[Ed. Note.—For other cases, see Railroads, Cent. Dig. §§ 1305-1310; Dec. Dig. § 383.* 11 Va.-W. Va. Enc. Dig. 592.]

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.